

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554
APR 20 2 46 PM '93

DISPATCHED BY
MM Docket No. 93-91

In the Matter of

Amendment of Section 73.202(b), RM-8197
Table of Allotments,
FM Broadcast Stations.
(Berlin, De Forest and
Wautoma, Wisconsin)

NOTICE OF PROPOSED RULE MAKING
AND ORDER TO SHOW CAUSE

Adopted: March 25, 1993; Released: April 20, 1993

Comment Date: June 11, 1993
Reply Comment Date: June 28, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by De Forest Broadcasting Company ("petitioner") requesting the allotment of Channel 226A to De Forest, Wisconsin, as that community's first local transmission service. Petitioner provided an engineering study in support of the proposal and indicated it would apply for the channel, if allotted.

2. We believe petitioner's proposal warrants consideration because the proposed allotment will provide De Forest with its first local transmission service. Channel 226A can be allotted to De Forest, Wisconsin, in compliance with the minimum distance separation requirements of the Commission's Rules provided Channel 272A is substituted for Channel 226A at Wautoma, Wisconsin, and Channel 284A is substituted for Channel 272A at Berlin, Wisconsin.¹ There is a site restriction 1.9 kilometers (1.2 miles) north of De Forest to prevent a short spacing to Station KATF, Channel 225C1, Dubuque, Iowa. Wautoma Radio Company is the sole applicant for Channel 226A at Wautoma, Wisconsin (File No. BPH-880421NZ).² The substitution at Wautoma can be made in compliance with the Commission's spacing requirements at the applicant's current site.³ The applicant for Channel 226A at Wautoma will be permitted to amend its application to specify the new Class A channel and retain its cut-off protection. Station WISS-FM, Berlin, operates on Channel 272A. Channel 284A can be substituted for Channel 272A at

Berlin, Wisconsin, in compliance with the Commission's spacing requirements at the current site for Station WISS-FM.⁴

3. Whenever an existing licensee is ordered to switch frequencies in order to accommodate a new channel allotment, we require the proponent of a new allotment to make a commitment that it will reimburse the affected station for costs incurred in changing frequencies. Petitioner has acknowledged its responsibility to reimburse Station WISS-FM, Berlin, for the reasonable costs in changing frequency if petitioner is the successful applicant for Channel 226A at De Forest.⁵

4. We believe the public interest would be served by proposing the allotment of Channel 226A to De Forest, Wisconsin, since it could provide the community with its first local transmission service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below:

City	Channel No.	
	Present	Proposed
Berlin, Wisconsin	272A	284A
De Forest, Wisconsin	---	226A
Wautoma, Wisconsin	226A	272A

5. IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Kingsley S. Murphy, Jr., the licensee of Station WISS-FM, Wautoma, Wisconsin, SHALL SHOW CAUSE why the license should not be modified to specify operation on Channel 284A in lieu of Channel 272A.

6. Pursuant to Section 1.87 of the Commission's Rules, Kingsley S. Murphy, Jr., may not later than June 11, 1993, file a written statement showing with particularity why the authorization should not be modified as proposed in the *Order to Show Cause*. The Commission may call upon Kingsley S. Murphy, Jr. to furnish additional information. If Kingsley S. Murphy, Jr. raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Kingsley S. Murphy, Jr. will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

7. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this *Notice of Proposed Rule Making and Order to Show Cause* to the following:

¹ The coordinates for Channel 226A at De Forest are 43-16-08 and 89-20-09.

² Channel 226A was substituted for Channel 222A at Wautoma in MM Docket 89-548. See 6 FCC Rcd 5783 (1991).

³ The coordinates for Channel 226A at Wautoma are 44-04-18 and 89-17-30.

⁴ The coordinates for Channel 284A at Berlin are 43-56-55 and 88-59-09.

⁵ In accordance with Commission policy, the ultimate permittee of FM Channel 226A at De Forest is responsible for reimbursement for the expenses incurred by Station WISS-FM in changing channels. See *Circleville, Ohio*, 8 FCC 2d 159 (1967).

Kingsley H. Murphy, Jr.
WISS-FM
207 Textile Bldg.
119 North 4th Street
Minneapolis, Minnesota 55401

Wautoma Radio Company
981 Howard Street
Green Bay, Wisconsin 54303
(Applicant for Channel 226A,
Wautoma, Wisconsin)

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before **June 11, 1993**, and reply comments on or before **June 28, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Richard J. Hayes, Jr.
13809 Black Meadow Road
Greenwood Plantation
Spotsylvania, Virginia 22553

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate

of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.